

NATIONAL SECURITY PROJECT



November 21, 2014

Hon. John Gleeson
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *United States v. Agron Hasbajrami*, No. 11 cr. 623 (JG)

Dear Judge Gleeson:

The American Civil Liberties Union Foundation (“ACLU”) respectfully requests leave to file an amicus brief in support of the defendant’s anticipated motion to suppress evidence obtained or derived from surveillance conducted under the FISA Amendments Act of 2008. The ACLU seeks leave to file its amicus brief on December 5, 2014, or on a schedule otherwise set by the Court.

The ACLU is aware that the Court denied the defendant’s motion to amend the pretrial schedule to establish deadlines for the filing of amicus briefs in this case (ECF No. 90). It is unclear, however, whether the Court denied the motion because the request was filed by the defendant rather than the proposed amici, because the Court was not amenable to the schedule that the defendant proposed, or because the Court had decided that participation of amici would not be helpful in this matter.

As the Court is aware, in the courts of appeals, amicus briefs are typically due seven days after the principal brief of the party being supported, as provided in Federal Rule of Appellate Procedure 29(e). That staggered timing ensures that amici have an opportunity to account for the party’s filing and arguments before submitting their own brief, avoiding unnecessary duplication. There is no equivalent default rule for the timing of amicus briefs in the district courts. As a result, in individual cases, district courts often set a schedule for amicus filings consistent with the appellate rule. *See, e.g.*, Amended Case Litigation Schedule at 4, *United States v. Khan*, No. 12-cr-00659 (D. Or. May 6, 2014) (ECF No. 74) (providing, in another criminal case involving the FISA Amendments Act, that amicus filings “are to be submitted within seven days of the defense motion that is the subject of the amicus filing”).

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In this case, the Court has set a deadline of November 26, 2014, for the filing of defense pretrial motions. Following the schedule set by the appellate rules, the ACLU respectfully seeks leave to file an amicus brief on December 5, 2014, or nine days after defense motions are filed, given the intervening Thanksgiving holiday.¹ If the Court is amenable to amicus briefs but not on this proposed timeline, the ACLU respectfully requests that the Court set an alternative schedule for such filings. Should the Court require it, the ACLU will file its brief simultaneously with the defense motions.

Thank you for the Court's consideration of this request.

Respectfully submitted,

/s/ Patrick Toomey

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cc: Seth DuCharme, Esq., counsel for the United States (via ECF)
Michael Bachrach, Esq., counsel for Agron Hasbajrami (via ECF)

¹ The ACLU understands that the government's briefs in opposition to pretrial motions are currently due December 24, 2014.